A

SINGAPORE PARA RUBBER ESTATE LTD

v.

PENTADBIR TANAH DAERAH, DAERAH REMBAU, NEGERI SEMBILAN

B

FEDERAL COURT, PUTRAJAYA
ALAUDDIN MOHD SHERIFF CJ (MALAYA)
HASHIM YUSOFF FCJ
ZULKEFLI AHMAD MAKINUDIN FCJ
C [CIVIL APPEAL NO: 01-6-2007(N)]
24 OCTOBER 2008

LAND LAW: *Acquisition of land - Objection against award - Enlargement of time - Whether there was non-compliance of statutory*
D *requirements - Whether amounted to special circumstances - Breach of duty - Serious injustice or prejudice - Whether objection filed out of time - Land Acquisition Act 1960, ss. 12(1), 14, 38(4)*

CONSTITUTIONAL LAW: *Right to property - Land acquisition - Objection against award - Enlargement of time - Whether there was non-*
E *compliance of statutory requirements – Whether amounted to special circumstances - Breach of duty - Serious injustice or prejudice - Whether objection filed out of time - Federal Constitution, art. 13(1)*

CIVIL PROCEDURE: *Time - Extension of time - Land acquisition –*
F *Objection against award - Whether there was non-compliance of statutory requirements - Whether amounted to special circumstances - Breach of duty - Serious injustice or prejudice - Whether objection filed out of time - Land Acquisition Act 1960, ss. 12(1), 14, 38(4) - Federal Constitution, art. 13(1)*

G

This was an appeal against the decision of the Court of Appeal dismissing the appellant's appeal against the High Court's decision refusing to grant an enlargement of time under s. 38(4) of the Land Acquisition Act 1960 ('Act') to enable the appellant to file
H an objection under Form N pursuant to s. 38(1) of the Act. The appellant was granted leave to appeal on the following question: Whether the non-compliance of the statutory requirements under the Act, in particular paras. 1(1)(b) and 2(d) of the First Schedule of the Act and art. 13(1) of the Federal Constitution, by the Land
I Administrator ('LA') in making the award under s. 14 of the Act amounted to special circumstances under s. 38(4) of the Act. The

appellant submitted that the sum of RM898,500, the award stated in the Form H dated 4 July 2002 issued by the respondent to the appellant for the acquisition of the relevant land, was not correct as it was based on the market value determined as at 19 February 2002, which was the date mentioned in the Government valuation report. According to the appellant, the correct date for the valuation of the said land should be 11 April 2002, the date mentioned in the Gazette pursuant to s. 8 of the Act. It was thus contended that the award made by the respondent in this matter was contrary to and not in accordance with the statutory requirements of the Act, in particular s. 12(1) and paras. 1(1)(b) and 2(d) of the First Schedule of the Act and, as such, the respondent was in breach of the duty imposed upon him.

Held (dismissing the appeal)
Per Alauddin Mohd Sheriff CJ (Malaya):

(1) The proviso to s. 12(1) of the Act provides that the LA may obtain a written opinion on the value of all scheduled lands from a valuer prior to making an award under s. 14 of the Act. This written opinion or report only acts as guidance to the LA. What the LA is required to do is to make a full enquiry into the value of all scheduled lands and shall as soon as possible thereafter assess the amount of compensation which in his opinion is appropriate before he made an award under s. 14(1) of the Act. As a matter of fact, the LA is not bound to accept the valuation report prepared by the Government valuer which merely acts as a guide in determining the award of compensation. In this case, based on the facts, the award was made on 3 July 2002 and the Form H was issued a day later *ie*, 4 July 2002. Therefore, the award made by the LA was proper and in compliance with paras. 1(1)(b) and 2(d) of the First Schedule of the Act. (paras 41, 42, 43, 44 & 45)

(2) Having read and re-read the records before this court, it was clear that the trial judge and the Court of Appeal had not erred in holding that the grounds preferred by the appellant could not be described as special circumstances. This was also not a case where art. 13 of the FC could be said to have been infringed as suggested by the appellant in the question posed. It followed, therefore, that if all the provisions of the Act had been complied with and the compensation due was

A also offered, the landowners could not complain of any violation of art. 13 of the FC. *Keck Seng (Malaysia) Bhd v. Pentadbir Tanah, Johor Bahru* (foll). (paras 53, 54, 55, 56 & 57)

B **(3)** Even assuming for a moment that there was non-compliance of the statutory requirements under the Act, in particular paras. 1(1)(b) and 2(d) of the First Schedule, by the LA while making the award under s. 14 of the Act, it did not result in any serious injustice or prejudice to the appellant. The C difference in the date of valuation *ie*, from 19 February 2002 to 11 April 2002, was only 52 days. In that short period, the value of the scheduled land would not have increased significantly. Any prejudice or injustice, if at all, caused to the appellant was the result of its own attitude. Had the appellant D remained vigilant in making the application for enlargement of time, it would have had the opportunity to ventilate its case before the High Court. But it chose to remain nonchalant and treated its right with apathy. (paras 58, 59, 60 & 61)

E **(4)** Based on the above reasons, the answer to the question should be in the negative. (para 64)

Per Zulkefli Ahmad Makinudin FCJ (concurring):

(1) If at all there had been a non-compliance by the respondent F of the statutory requirements under the Act in making the award under s. 14 of the Act, this issue should be taken up and argued at the hearing of the objection of the appellant in the reference to the High Court under s. 36 of the Act. In fact on this point the appellant, as an aggrieved party, had G recourse to state its case in challenging the respondent's award at that stage of the proceedings by producing its own Private Valuation Report before the court. But that was not the case before this court. The true position in the present case was that the appellant had been out of time in filing its H application for objection to the award within six weeks from the date of the LA's award. The appellant in fact had already failed in the first hurdle of satisfying the High Court and Court of Appeal of the justification to grant an enlargement of time to file objection proceedings under Form N. (para 73)

I

Bahasa Malaysia *Translation Of Headnotes*

Ini adalah rayuan menentang keputusan Mahkamah Rayuan yang menolak rayuan perayu terhadap keputusan Mahkamah Tinggi yang tidak membenarkan sesuatu perlanjutan masa di bawah s. 38(4) Akta Pengambilan Tanah 1960 ('Akta') untuk membolehkan perayu memfail sesuatu bantahan di bawah Borang N mengikut s. 38 Akta. Perayu diberi kebenaran untuk merayu ke atas soalan yang berikut: Sama ada ketidakpatuhan keperluan statutori di bawah Akta, terutamanya perenggan-perenggan 1(1)(b) dan 2(d) Jadual Pertama Akta dan art. 13(1) Perlembagaan Persekutuan ('FC'), oleh Pentadbir Tanah ('LA') dalam membuat award di bawah s. 14 Akta bermaksud halkeadaan khas di bawah s. 38(4) Akta. Perayu menghujah bahawa jumlah RM898,500, iaitu award yang dinyatakan di dalam Borang H bertarikh 4 Julai 2002 yang dikeluarkan oleh responden kepada perayu bagi pengambilan tanah relevan, tidak betul kerana ia berdasarkan nilai pasaran yang ditentukan pada 19 Februari 2002, iaitu tarikh yang disebut dalam laporan penilaian Kerajaan. Mengikut perayu, tarikh yang betul untuk penilaian tanah tersebut sepatutnya 11 April 2002, iaitu tarikh yang disebut di dalam warta mengikut s. 8 Akta. Oleh itu, ia dihujahkan bahawa award yang dibuat oleh responden dalam hal ini bertentangan dan tidak mematuhi keperluan statutori Akta, terutamanya s. 12(1) dan perenggan-perenggan 1(1)(b) dan 2(d) Jadual Pertama Akta dan, oleh demikian, responden telah melanggar kewajipan yang diletak atasnya.

Diputuskan (menolak rayuan)
Oleh Alauddin Mohd Sheriff HB (Malaya):

(1) Proviso ke s. 12(1) Akta mengatakan bahawa LA boleh memperolehi sesuatu pendapat bertulis ke atas nilai semua tanah-tanah yang dijadual dari seseorang penilai sebelum membuat sesuatu award di bawah s. 14 Akta. Pendapat bertulis atau laporan ini hanya bertindak sebagai panduan kepada LA. Apa yang LA perlu buat ialah untuk melaksanakan sesuatu siasatan penuh ke dalam nilai semua tanah-tanah yang dijadual dan secepat mungkin selepas itu menaksir amaun ganti rugi yang pada pendapatnya adalah berpatutan sebelum beliau membuat sesuatu award di bawah s. 14(1) Akta. Sebenarnya, LA tidak semestinya menerima laporan penilaian yang disediakan oleh penilai Kerajaan yang hanya berfungsi sebagai

panduan dalam menentukan award ganti rugi. Dalam kes ini, di atas fakta, award telah dibuat pada 3 Julai 2002 dan Borang H telah dikeluarkan sehari selepas itu, iaitu 4 Julai 2002. Oleh itu, award yang dibuat oleh LA ialah betul dan mengikuti perenggan-perenggan 1(1)(b) dan 2(d) Jadual Pertama Akta.

(2) Setelah membaca dan membaca semula rekod-rekod di hadapan mahkamah ini, ia jelas bahawa hakim perbicaraan dan Mahkamah Rayuan tidak khilaf apabila memutuskan bahawa alasan-alasan yang dibuat oleh perayu tidak boleh dikatakan sebagai halkeadaan khas. Ini juga bukan sesuatu kes di mana art. 13 FC boleh dikatakan telah dilanggari seperti yang diakatakan oleh perayu di dalam soalan yang dikemukakan. Oleh itu, jikalau peruntukan Akta telah diikuti dan ganti rugi telah ditawar, pemilik tanah tidak boleh mengadu tentang apa-apa pelanggaran art. 13 FC. *Keck Seng (Malaysia) Bhd v. Pentadbir Tanah, Johor Bahru* (diikuti).

(3) Katakanlah untuk seketika bahawa terdapat ketidakpatuhan keperluan statutori di bawah Akta, terutamanya perenggan-perenggan 1(1)(b) dan 2(d) Jadual Pertama, oleh LA ketika membuat award di bawah s. 14 Akta, ia tidak mengakibatkan apa-apa ketidakadilan ataupun prejudis kepada perayu. Perbezaan dalam tarikh penilaian, iaitu, dari 19 Februari 2002 ke 11 April 2002, hanya 52 hari. Dalam jangkamasa pendek sebegitu, nilai tanah yang dijadual tidak akan bertambah dengan banyak. Apa-apa prejudis ataupun ketidakadilan, jikalau ada, yang diakibatkan kepada perayu ialah hasil dari sikapnya sendiri. Jikalau perayu berjaga-jaga semasa membuat permohonan untuk perlanjutan masa, ia akan mempunyai peluang untuk menyuarakan kesnya di hadapan Mahkamah Tinggi. Tetapi ia memilih untuk acuh tak acuh dan tidak mempedulikan haknya.

(4) Berdasarkan sebab-sebab di atas, soalan tersebut sepatutnya dijawab secara negatif.

Oleh Zulkefli Ahmad Makinudin HMP (bersetuju):

(1) Jikalau terdapat ketidakpatuhan dengan keperluan statutori di bawah Akta oleh responden semasa membuat award di bawah s. 14 Akta, isu ini patut diperpanjangkan dan dihujah pada pembicaraan bantahan perayu dalam perujukan ke Mahkamah

Tinggi di bawah s. 36 Akta. Sebenarnya atas perkara ini perayu, sebagai pihak terkilan, mempunyai jalan untuk menyatakan kesnya dengan mencabar award responden pada peringkat tersebut prosiding dengan mengemukakan Laporan Penilaian Persendirian di hadapan mahkamah. Tetapi itu bukan kes di hadapan mahkamah ini. Kedudukan sebenar dalam kes ini ialah bahawa perayu telah kehabisan masa di dalam memfail permohonannya untuk bantahan terhadap award dalam masa enam minggu dari tarikh award LA. Perayu sebenarnya telahpun gagal dalam rintangan pertama untuk memuaskan Mahkamah Tinggi dan Mahkamah Rayuan ke atas justifikasi membenarkan sesuatu perlanjutan masa untuk memfail prosiding bantahan di bawah Borang N.

Case(s) referred to:

Chor Phaik Har v. Farlim Propertities Sdn Bhd [1994] 4 CLJ 285 FC ***(refd)***

Foo Yoke Ling & Anor v. Television Broadcasts Ltd & Ors [1985] 2 MLJ 35 ***(refd)***

Keck Seng (Malaysia) Berhad v. Pentadbir Tanah, Johor Bahru [1996] 3 CLJ 573 HC ***(foll)***

Lau Cher Hiam v. Collector of Land Revenue, Muar [1969] 1 LNS 77 ***(refd)***

Lau Kieng Kong & Ors v. Minister for Resources Planning & Anor [1994] 4 CLJ 383 HC ***(refd)***

Lau Tin v. Collector of Land Revenue [1960] 26 MLJ 82 ***(refd)***

Megat Najmuddin Dato' Seri (Dr) Megat Khas v. Bank Bumiputra Malaysia Bhd [2002] 1 CLJ 645 FC ***(refd)***

Pemungut Hasil Tanah, Daerah Barat Daya (Balik Pulau), Pulau Pinang v. Kam Gin Paik & Ors [1983] 1 LNS 37 ***(refd)***

Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v. Ong Gaik Kee [1983] 1 LNS 14 ***(refd)***

Penang Development Corporation v. Collector of Land Revenue, Penang [1975] 1 LNS 122 ***(refd)***

Senapi Long & Satu Yang Lain v. Pentadbir Tanah Daerah, Langkawi, Kedah [1993] 1 LNS 102 ***(refd)***

Sungei Bongkoh Estate Sdn Bhd v. Pentadbir Tanah Daerah Kuala Muda [1995] 1 CLJ 400 HC ***(refd)***

Tan Sung Mooi v. Too Miew Kim [1994] 3 CLJ 708 SC ***(refd)***

Legislation referred to:

Federal Constitution, art. 13(1)

Land Aquisition Act 1960, ss. 8, 12(1), 14(1), 16, 36, 37, 38(1), (3)(a), (4), First Schedule, paras 1(1)(b), 2(d)

A *For the appellant - Dato' Ghazi Ishak; M/s Balwant Singh & Co*
For the respondent - Ishak Shahari; State Legal Adviser

[Appeal from Court of Appeal; Civil Appeal No: N-01-38-05]

Reported by Suresh Nathan

B

JUDGMENT

Alauddin Mohd Sheriff CJ (Malaya):

C

Introduction

[1] This is an appeal against the decision of the Court of Appeal dated 23 January 2007.

D **[2]** The Court of Appeal dismissed the appellant's appeal against the decision of the Seremban High Court (in originating motion No. 25-2-2003) which refused to grant an enlargement of time under s. 38(4) of the Land Acquisition Act 1960 ('the Act') to enable the appellant to file an objection under Form N pursuant
E to s. 38(1) of the Act.

[3] On 16 July 2007 the appellant obtained leave to appeal from the Federal Court on the following question:

F
> Whether the non-compliance of the statutory requirements under the Land Acquisition Act 1960 ('the Act') in particular, paragraph 1(1)(b) and paragraph 2(d) of the First Schedule of the Act and Article 13(1) of the Federal Constitution by the Land Administrator, in making the award under section 14 of the Act, amounts to special circumstances under section 38(4) of the Act.

G

Background Facts

[4] The appellant is the registered proprietor of Lot 1322, Mukim Pedas, Daerah Rembau, Negeri Sembilan Darul Khusus held under Certificate of Title No. 428.

H

[5] Lot 1322 constitutes part of the appellant's land which forms part of the Perhentian Tinggi Estate in Negeri Sembilan.

I

[6] On or about 7 June 2002, the Manager of Perhentian Tinggi Estate had received a Form E (Intended Acquisition: Notice Of Enquiry) dated 6 June 2002 from the respondent. According to the form E, the proposed acquisition was for 8.094 hectares of the total size of the lot which is 71.530 hectares.

[7] As a result of the enquiry held on 3 July 2002, the respondent had issued Form H – (Notice of Award and Offer of Compensation) dated 4 July 2002 wherein the appellant was awarded compensation amounting to RM898,500.

[8] The appellant received the offer under protest. The Manager of Perhentian Tinggi Estate had also informed the respondent that the appellant objected to the compensation offer.

[9] Subsequently *vide* letter dated 6 August 2002, the respondent had forwarded to the appellant Form N – (An application for an objection to be referred to court) to be filled up and returned to the respondent with a deposit of RM3,000.

[10] The respondent did not at any time inform the appellant that Form N was to be returned to the respondent within six weeks from the date of the award.

[11] The appellant had appointed Messrs. Khong and Jaafar to prepare a valuation report on part of Lot 1322 which was subject to the acquisition exercise.

[12] Based on the valuation report by Messrs. Khong and Jaafar the reasonable compensation award would be RM2,139,302.

[13] There is a difference of RM1,240,802 between the amount of compensation awarded by the respondent (ie, RM898,500) and the amount valued by Messrs. Khong and Jaafar (ie, RM2,139,302).

[14] In mid December 2002, upon consultation with the appellant's solicitors Messrs. Presgrave and Matthews the appellant was advised that s. 38 of the Act requires Form N to be forwarded to the respondent within six weeks from the date of the respondent's award together with the deposit of RM3,000.

[15] Realising they were out of time the appellant then filed an application (dated 6 January 2003) at the Seremban High Court for an enlargement of time of two weeks from the date of the order to be given for the appellant to file Form N pursuant to s. 38(1) of the Act.

The High Court

[16] Before the High Court the grounds proferred by the appellant supporting the application are simply these:

(i) The appellant at the enquiry held by the Land Administrator had already made it known that the offer was unacceptable;

(ii) The appellant was not informed by the respondent of the time frame for them to refer their objection to the court;

(iii) The valuation report on the said land was only ready on 18 September 2002; and

(iv) The delay in filing Form N was inadvertent.

[17] Having heard arguments by learned counsel from both parties and considered the relevant law, the learned judge concluded thus:

> Reverting back to the present case and the grounds preferred supporting the application, with the principles enunciated in the above-mentioned cases in the fore-front of my mind I am unable to see how those grounds could go through the filtration of conditions and situations for them to be aptly described as "special circumstances".

[18] Further in the judgment the learned judge observed:

> In *Lau Cher Hian* case, on the facts of the case, the Federal Court came to a finding of facts that due to certain slip-up by the respondent there was hardship caused to a party who was not in the least at fault. This was not the situation in our present case. On the facts laid before the court I can find no reason to fault the respondent for the inability of the applicant to file form N on time. It was the applicant themselves who had been guilty of indolence and perhaps indifference too. This conduct of the applicant to my mind had disentitled them to any indulgence that would warrant the court to exercise its discretion to tamper the rigidity of the law.

[19] For the reasons stated above the learned judge dismissed the application with costs.

The Court Of Appeal

[20] Dissatisfied with the decision of the High Court the appellant took the matter to the Court of Appeal.

[21] The same arguments that were canvassed before the High Court were put forward in the appeal by both learned counsel.

[22] The appeal heard by the Court of Appeal started off with the acceptance by both parties that an objection to the award of the Land Administrator required the submission of Form N to the respondent within six weeks from the date of the award.

[23] The Court of Appeal observed that the court has the discretion to enlarge that period as prescribed by s. 38(3)(a) of the Act. It then referred to the cases of *Penang Development Corporation v. Collector of Land Revenue, Penang* [1975] 1 LNS 122 and *Senapi bin Long & Satu Yang Lain v. Pentadbir Tanah Daerah, Langkawi, Kedah* [1993] 1 LNS 102.

[24] The Court of Appeal further observed that for the appellant to succeed it had to establish that there existed special circumstances to warrant the court to exercise its discretion. In other words the onus was on the appellant. The discretion to be exercised by the court was not absolute and unqualified and had to be exercised sparingly.

[25] In upholding the learned judge's finding the Court of Appeal had this to say:

> Having sifted the evidence we were satisfied that the trial judge had not erred in holding that the grounds preferred by the appellants could not be described as special circumstances. Before us the same arguments were ventilated eg, the non-notification of the dateline for appeal by the respondent, a commission of a *bona fide* mistake on its part/ignorance of law, undue hardship to the appellant, and no fault on the part of the appellant.

[26] To the complaint by the appellant that it was not informed by the respondent of the six weeks period to submit Form N the Court of Appeal said that upon perusal of s. 16 of the Act, it merely legislated that the Land Administrator shall prepare and serve on each person interested in such land a notice in Form H.

In it would be the written award. Nothing was included within the four walls of s. 16 or in Form H that the Land Administrator was under a duty to inform the appellant of the submission of Form N. That being so the Land Administrator was blameless as it had complied with all the statutory requirements.

[27] Explaining further the complaint by the appellant, the Court of Appeal had this to say:

> To appreciate the complaint of the appellant a scrutiny of section 38 and Form N would not be inappropriate. With respect we were unable to identify even a single suggestion in that section that it was incumbent upon the Land Administrator to inform the appellant of the dateline of the impugned Form N. A thorough scrutiny of Form N itself bore the same fruits. The wordings of section 38 and Form N were crystal clear in that the onus was on the appellant to do the needful, and for the Land Administrator to comply with the directions of the appellant, after having received the completed form.

[28] Further down in the judgment the Court of Appeal said:

> A cursory glance of the provision of section 38(1) as printed in the supplied Form N, whether by an employee of the appellant or a more qualified person, would have alerted that reader of the statutory requirements. Instead here, the appellant was nonchalant, and had preferred to wait for the valuation report, which came on 18.9.2002, about a month after the expiry of the objection date. Either the appellant was just too indolent to read the contents of the form, or after reading it and being overly confident, had ignored it.

[29] Reflecting on some of the main issues submitted by the appellant the Court of Appeal came to the following findings:

(i) There was no confusion on their part that it was the bounden responsibility of the appellant to file the statutory Form N on time ie, within six weeks of the receipt of the Land Administrators' award;

(ii) Even though in the course of the appeal attempts were made to convince them that the appellant was unaware of the legal and statutory requirements, that submission was unacceptable. Instead of approaching that 'ignorance of the law' concept in an apologetic and refined manner, the appellant had instead indulged in the blame game;

(iii) The respondent was under no statutory duty to inform the appellant of the filing of Form N and its dateline;

(iv) The respondent was blameless in its conduct, and had in fact undertaken the extra effort of posting the forms to the appellant, but regretfully had received brickbats in return;

(v) There was nothing in the behaviour of the respondent that could be construed as 'inequitable', and which had caused the delay in the filing of that impugned form by the appellant;

(vi) The mere difference of opinion by the Government and the appellant's private valuer, as regards the value of the land in the circumstances of this case, was not a special circumstance; and

(vii) The undisguised indolence and nonchalance on the part of the appellant was too overwhelming to deserve even an ounce of the court's sympathy.

[30] Having considered the submissions of both parties in their entirety, the Court of Appeal was unconvinced that the appellant had successfully established a case that deserved the exercise of the court's discretion.

[31] Finally, the appeal was dismissed with costs.

The Appeal

[32] As stated earlier in the judgment (see para 3 above), the only question posed for our determination in this appeal is "whether the non-compliance of the statutory requirements under the Land Acquisition Act 1960 ('the Act') in particular, para 1(1)(b) and para 2(d) of the First Schedule of the Act and art. 13(1) of the Federal Constitution by the Land Administrator in making the award under s. 14 of the Act, amounts to special circumstances under s. 38(4) of the Act."

[33] Before us, learned counsel for the appellant submitted that the sum of RM898,500, the award stated in Form H dated 4 July 2002 was not correct as it was based on the market value determined as at 19 February 2002 which was the date mentioned in the Government valuation report.

[34] According to learned counsel the correct date for the valuation of the said land should be 11 April 2002 ie, the date mentioned in the Gazette pursuant to s. 8 of the Act.

[35] That being the case it is contended that the award made by the respondent in this matter is contrary to and not in accordance with the statutory requirements of the Act in particular s. 12(1) and para 1(1)(b) and 2(d) of the First Schedule of the Act and as such the respondent is in breach of the duty imposed upon him.

[36] The words in s. 12(1), para 1(1)(b) and 2(d) of the First Schedule of the Act are clear and unambiguous and therefore effect should be given to them.

[37] In support of his submission learned counsel for the appellant referred to the cases of *Foo Yoke Ling & Anor v. Television Broadcasts Ltd & Ors.* [1985] 2 MLJ 35; *Tan Sung Mooi v. Too Miew Kim* [1994] 3 CLJ 708; *Chor Phaik Har v. Farlim Propertities Sdn Bhd* [1994] 4 CLJ 285; *Pemungut Hasil Tanah, Daerah Barat Daya (Balik Pulau) Pulau Pinang v. Kam Gin Paik & Ors* [1983] 1 LNS 37; *Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v. Ong Gaik Kee* [1983] 1 LNS 14 and *Megat Najmuddin Dato' Seri (Dr) Megat Khas v. Bank Bumiputra Malaysia Bhd.* [2002] 1 CLJ 645.

[38] The other issue raised by learned counsel for the appellant is that as a result of the non-compliance of the Act, the said award would be contrary to art. 13 of the Federal Constitution and under its inherent jurisdiction this Honourable Court can set aside the said award and direct the respondent to conduct a 'full enquiry' pursuant to s. 12 of the Act into all aspects of the claim to determine the proper market value and quantum of compensation for the land acquired.

Decision

[39] The question posed for our determination speaks of "noncompliance of the statutory requirements under the Act".

[40] The alleged non-compliance is in respect of the valuation report prepared by the Jabatan Perkhidmatan dan Penilaian (JPPH), the Government valuer, in which the date for determining the market value of the land to be acquired was stated to be 19 February 2002 instead of 11 April 2002 (the date of Gazette under s. 8 of the Act).

[41] The proviso to subsection 12(1) of the Act provides that the Land Administrator may obtain a written opinion on the value of all scheduled lands from a valuer prior to making an award under s. 14. A

[42] The written opinion or report provided under the proviso to subsection 12(1) only acts as a guidance to the Land Administrator. What the Land Administrator is required to do is to make a full enquiry into the value of all scheduled lands and shall as soon as possible thereafter assess the amount of compensation which in his opinion is appropriate before he made an award under s. 14(1) of the Act. B C

[43] As a matter of fact, the Land Administrator is not bound to accept the valuation report prepared by the Government valuer which merely acts as a guide in determining the award of compensation. D

[44] In this case, based on the facts, the award was made on 3 July 2002 and Form H was issued a day later ie, 4 July 2002.

[45] Therefore, in our view, the award made by the Land Administrator was proper and in compliance with para 1(1)(b), and 2(d) of the First Schedule of the Act. E

[46] It would appear that the appellant's objection here is indeed in respect of the sufficiency of the award. F

[47] Objections as to its sufficiency are permitted as s. 37 of the Act allows it, and in this case, on the amount of the compensation.

[48] What the appellant had to do further was to notify the respondent that it had objections and request that the matter be referred to the court. That notifications had to be in a written application and in a particular form ie, Form N. Thereafter only shall that completed Form N be forwarded to the court by the Land Administrator. This is a requirement under s. 38(1). G H

[49] The failure to fill in the form, and to send it within the prescribed period of six weeks was a procedural insufficiency which could be rectified conditional upon court's interference *vide* s. 38(4). I

[50] In order for the appellant to succeed under s. 38(4) it had to establish that there existed special circumstances to warrant the court to exercise that discretion. The onus therefore was on the appellant.

[51] The discretion to be exercised by the court was not absolute and unqualified and had to be exercised sparingly (see *Sungei Bongkoh Estate Sdn. Bhd. v. Pentadbir Tanah Daerah Kuala Muda* [1995] 1 CLJ 400).

[52] In this case both the High Court and the Court of Appeal agreed that no special circumstances existed and the application for enlargement of time was dismissed.

[53] Having read and re-read the records before us, we were satisfied that the trial judge and the Court of Appeal had not erred in holding that the grounds preferred by the appellants could not be described as special circumstances.

[54] We are also of the view that this is not a case where art. 13 of the Federal Constitution can be said to be infringed as suggested by the appellant in the question posed.

[55] Article 13 of the Federal Constitution was raised as an issue in the case of *Keck Seng (Malaysia) Berhad v. Pentadbir Tanah, Johor Bahru* [1996] 3 CLJ 573.

[56] There the court held (at pp. 586 and 587) as follows:

> Within the same context, the plaintiff has also contended that it is contrary to Article 13(2) of the Federal Constitution to award them the market value of Lot 487, as assessed by the defendant, as at the date of the first notification as the value of Lot 487 has substantially increased by virtue of the "zone changes" as mentioned earlier. Article 13(2) of the Federal Constitution reads:
>
> No law shall provide for the compulsory acquisition or use of property without adequate compensation:
>
> With respect, I cannot see the relevance of raising Article 13(2). This article lays down the constitutional standard of an expropriatory law and has no bearing on the issue before me which is whether the market value of Lot 487 should be assessed as at the date of the first notification or the third notification. The Act itself is not being challenged and this Article is therefore irrelevant for the purpose of this action. I do not think it is

necessary for me to delve further into this" (see also *Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v. Ong Craik Kee* [1983] 2 MLJ 35).

[57] It follows, therefore, that if all the provisions of the Act have been duly complied with and the compensation due is also offered, the land owners cannot complain of any violation of art. 13 of the Federal Constitution.

[58] Even assuming for a moment that there was non-compliance of the statutory requirements under the Act in particular para 1(1)(b) and 2(d) of the First Schedule by the Land Administrator while making the award under s. 14, it is our considered opinion that the non-compliance have not resulted in any serious injustice or prejudice to the appellant. The difference in the date of valuation ie, from 19 February 2002 to 11 April 2002 is only 52 days. In that short period we do not think that the value of the scheduled land would have increased significantly (see *Lau Kieng Kong & Ors v. Minister for Resources Planning & Anor* [1994] 4 CLJ 383.

[59] Any prejudice or injustice, if at all, caused to the appellant is actually the result of their own attitude.

[60] Had the appellant remained vigilant in making the application for enlargement of time, they would have had the opportunity to ventilate their case before the High Court.

[61] But the appellant had chosen to remain nonchalant and treated their right with apathy.

[62] It must be emphasised that this was no ordinary appellant but a sophisticated globe trotting company with the resources to acquire professional advice at the snap of its hypothetical fingers.

[63] What amounts to special circumstances under s. 38(4) of the Act have been the subject of various decision of our courts previously. We perceive that this is an area of law that is trite and settled (see *Lau Cher Hiam v. Collector of Land Revenue, Muar* [1971] 1 MLJ 96; *Lau Tin v. Collector of Land Revenue* [1960] 26 MLJ 82).

Conclusion

[64] Based on the above reasons we are unanimous that the answer to the above question should be in the negative. In the result this appeal is dismissed with costs. We would also order the deposit to be paid to the Respondent to account for taxed costs.

[65] My learned brothers Hashim Yusoff and Zulkefli Ahmad Makinudin FCJJ have seen this judgment in draft and had expressed their agreement with it.

Zulkefli Ahmad Makinudin FCJ:

[66] I have read the judgment in draft of the learned Chief Judge, Malaya ("CJM") and I agree with the views expressed and the decision reached by his lordship in dismissing the appeal by the appellant. I would like to add in a few words in support of the judgment of the learned CJM as follows:

[67] It is to be noted at the outset that before the High Court and the Court of Appeal the same arguments were ventilated by the appellant in its application for enlargement of time to file objection proceedings under Form N pursuant to s. 38(1) of the Land Acquisition Act 1960 ("the Act"). Amongst others, the grounds relied on in its application are the non-notification of the dateline for appeal by the respondent, a commission of a *bona fide* mistake on the appellant's part, ignorance of law, undue hardship to the appellant and no fault on the part of the appellant.

[68] At the stage of the appeal before us now, it would appear however, that the appellant has abandoned all the grounds proferred before the High Court and the Court of Appeal. Learned counsel for the appellant in the appeal before this court now focused his arguments essentially on the new ground that the award made by the Land Administrator is contrary to the statutory requirements of the Act and art. 13(1) of the Federal Constitution. This is in line with the sole question posed for our determination after the appellant had obtained leave to appeal from the Federal Court on 16 July 2007. To the appellant this ground amounts to special circumstances under s. 38(4) of the Act. It is the contention of the appellant that the respondent was in breach of the duty imposed upon him as he did not comply with the materials relevant to the assessment and that the amount of

compensation was not made in accordance with the provisions of s. 12(1) of the Act and para 1(1)(b) and para 2(d) of the First Schedule of the Act. Section 12(1) of the Act provides as follows:

> On the date appointed under section 10(1) the Land Administrator shall make full enquiry into the value of all scheduled lands and shall as soon as possible thereafter assess the amount of compensation which in his opinion is appropriate in each case according to the consideration set out in the First Schedule:
>
> Provided that the Land Administrator may obtain a written opinion on the value of all scheduled lands from a valuer prior to making an award under section 14.

[69] Paragraph 1(1)(b) of the First Schedule to the Act states as follows:

> 1. Market Value
>
> (1) For the purposes of this Act the term 'market value' where applied to any scheduled land shall mean the market value of such land -
>
> (a) ...
>
> (b) In any other cases, at that date of the publication in the Gazette of the declaration made under section 8.

[70] Paragraph 2(d) of the First Schedule to the Act states as follows:

> 2. Matters to be considered in determining compensation
>
> (a) ...
>
> (b) ...
>
> (c) ...
>
> (d) The damage, if any, sustained or likely to be sustained by the person interested at the time of the Land Administrator taking possession of the land by reasons of the acquisition injuriously affecting his other property whether movable or immovable, in any other manner.

[71] It is the appellant's case that the respondent's award for the said sum of RM898,500 purportedly made under s. 12 of the Act is flawed in law. The appellant contended that the said award was wrongly made since it was based on the market value as at 19

February 2002 which was as stated in the Government Valuation Report relied by the respondent. To the appellant in law the market value of the scheduled land should be based on the date under the notice issued by virtue of the provision of s. 8 of the Act as published in the Negeri Sembilan Government Gazette No. 179 which is dated 11.04.2002.

[72] With respect to the above contention of the appellant I am of the view it cannot be said that there was a non-compliance by the respondent of the statutory requirements under the Act in the making of the award. The so called non-compliance as alleged by the appellant is in relation to the valuation report prepared by the Jabatan Perkhidmatan dan Penilaian Harta, the Government Valuer as relied on by the respondent in which the date in determining the market value of the land to be acquired was given as at 19 February 2002 instead of 11 April 2002, the date of the Gazette under s. 8 of the Act. On this issue of reliance by the Land Administrator of the assessment made by the Government valuer it is to be noted that the proviso to subsection 12(1) of the Act states that the respondent as the Land Administrator may obtain a written opinion on the value of all scheduled lands from a valuer prior to making an award under s. 14. I am of the view the written opinion or report provided under the proviso to subsection 12(1) only acts as a guidance to the Land Administrator. Under the Act what the Land Administrator is required to do is to make full enquiry into the value of all scheduled lands and shall as soon as possible thereafter assess the amount of compensation which in his opinion is appropriate before he made an award under s. 14(1) of the Act. The Land Administrator is not bound to accept the valuation report made by the Government valuer but just as a guide in determining the award of compensation.

[73] It is my view that if at all there has been a non-compliance by the respondent of the statutory requirements under the Act in making the award under s. 14 of the Act, this issue should be taken up and argued at the hearing of the objection of the appellant in the reference to the High Court under s. 36 of the Act. In fact on this point the appellant as an aggrieved party has a recourse to state his case in challenging the award of the respondent at that stage of the proceedings by producing its own Private Valuation Report before the court. But this is not the case before us now. The true position in the present case is that the

appellant had been out of time in filing its application for objection to the award within six weeks from the date of the Land Administrator's award was made under s. 14 of the Act. The appellant in fact has already failed in the first hurdle of satisfying the High Court and the Court of Appeal of the justification to grant enlargement of time to file objection proceedings under Form N.

[74] For the reasons above stated my answer to the question posed should be in the negative. I would therefore dismiss the appeal with costs and an order be made that the deposit is to be paid to the respondent to account for taxed costs.